



2024:DHC:2966



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 29.01.2024
Pronounced on: 15.04.2024

+ **CM(M) 1109/2023 & CM APPL. 35944/2023**

ANISA SINGH AND ANR Petitioners
Through: Mr.Sanjeev Sindhvani, Sr.
Adv. with Mr.Siddharth
Aggarwal and Mr.Gaurav
Sindhvani, Advs.

versus

SIR SOBHA SINGH PUBLIC CHARITABLE TRUST AND
ORS Respondents
Through: Mr.Preetesh Kapur, Sr. Adv.
with Mr.Shaunak Kahsyap,
Mr.Balasubramanian Ramesh
Iyer and Mr.Praateek Singh
Kundu, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed under Article 227 of the Constitution of India challenging the Order dated 23.01.2023 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional District Judge-10, Central District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Trial Court') in Civil Suit, being CS No.18674/2016, titled ***Sir Sobha Singh Public Charitable Trust v. S. Shivinder Singh***, allowing an application filed



2024:DHC:2966



by the respondent no.1 herein under Order XV-A read with Section 151 of the Code of Civil Procedure, 1908 (in short, 'CPC') and directing the petitioners herein to make payment at the rate of Rs.2,00,000/- per month to the respondent no.1 from the date of the enactment of the Order XV-A of the CPC, that is, 12.11.2008.

Background facts:

2. The facts that give rise to the filing of the present petition are that the respondent no.1, a Charitable Public Trust, has filed the Subject Suit praying for a decree of permanent injunction, mandatory injunction, and damages with respect to the portions of the property bearing no. 1-A, Janpath, New Delhi- 110011 (hereinafter referred to as the 'Suit Property') against Sh. Shivinder Singh, the father of the petitioner no.1 and the husband of the petitioner no.2, who has unfortunately expired on 09.06.2018. The petitioners herein were substituted as his legal heirs vide Order dated 28.01.2019 of the learned Trial Court.

3. It is alleged in the plaint that the Late S.B. Sir Sobha Singh, as the founder of the respondent no.1-Trust, was the owner in possession of the Suit Property. He executed an alleged Settlement dated 25.07.1972 in favour of the respondent no.1-Trust and handed over the possession of Suit Property to the Trust. It is stated that Late Mrs. Mahinder Jaspal Singh, mother of Sh. Shivinder Singh (the Original Defendant), was the daughter of Late S.B. Sir Sobha Singh and the sister of the other Trustees. She was made a Trustee of the respondent no.1-Trust.



2024:DHC:2966



4. It is averred in the plaint, that after the death of her husband in the year about 1977-78, her father invited her to live with him at the cottages at the rear portion of the Suit Property. It is alleged that on 15.04.1985, a meeting was held of all the Trustees wherein it was decided that for the time being Mrs. Mahinder Jaspal Singh may continue to live in the cottage along with other parts of the property in her possession, free of charge. It is stated that during her stay, she was given the authority to act as the custodian of some parts of the Suit Property. It is further alleged that it was well understood amongst Mrs. Mahinder Jaspal Singh and the other interested parties in relation to the respondent no.1, that Mrs. Mahinder Jaspal Singh was only being allowed/authorised to stay in the said premises out of love and affection and the same does not confer any right of ownership, adverse possession, tenancy, or lien, etc., in her favour, and it was further clarified that the privilege was given to her alone and it will not *ipso facto* entitle the legal representatives of Mrs. Mahinder Jaspal Singh to occupy the said premises after her death or for any other reason whatsoever. It is stated that she agreed that she would hand over the peaceful possession of the Suit Property to the respondent no.1- Trust and its trustees, as and when it was demanded.

5. It is alleged that vide letter dated 15.12.1995, Mrs. Mahinder Jaspal Singh was called upon to handover the possession of the Suit Property to the respondent no.1-Trust. It is averred that thereafter, Mrs. Mahinder Jaspal Singh and her family, including the petitioners herein and the original defendant, Sh. Shivinder Singh, continued to reside temporarily and unauthorisedly in the Suit Property.



2024:DHC:2966



6. It is stated that the Sh. Shivinder Singh executed an acknowledgement-cum-undertaking dated 01.10.1996 in the form of an affidavit to the respondent no.1-Trust, wherein it was acknowledged that their presence was temporary and he further undertook to move out as soon as his mother-Mrs. Mahinder Jaspal Singh leaves the premises or in the event of her passing away. It is stated that in view of the said undertaking, the eviction process was not initiated against the petitioners and Sh. Shivinder Singh by the respondent no.1-Trust.

7. It is stated that vide letter dated 03.01.2004, the brother of Sh.Shivinder Singh, namely Sh. Jasvinder Singh, on behalf of Mrs.Mahinder Jaspal Singh, requested the respondent no.1 Trust to allow her to stay there on medical grounds. It is stated that vide letter dated 06.01.2004, the Trust for her medical reasons, allowed her to use and occupy the Suit Property for a period starting from 06.01.2004 till 31.12.2004 on a payment of license fee of Rs. 12,000/- per month. The said period was extended from 01.01.2005 to 31.12.2005, on the same terms and conditions, considering the medical grounds. It is stated that, unfortunately, Mrs. Mahinder Jaspal Singh expired on 02.07.2005.

8. It is alleged that even after the death of Mrs. Mahinder Jaspal Singh, Sh. Shivinder Singh along with the petitioners herein, being the unauthorised occupants, did not vacate the Suit Property, and the respondent no.1 Trust got issued a legal notice dated 16.11.2005.

9. It is stated that despite the said legal notice Sh. Shivinder Singh along with the petitioners did not hand over the peaceful possession of



the Suit Property to the respondent no.1 Trust, instead, they got issued a reply dated 01.01.2006, claiming right, title, and interest in the Suit Property, leading to the filing of the Subject Suit.

10. The Subject Suit is filed praying for the following reliefs: -

- i) pass a decree of mandatory injunction in favor of the Plaintiff against the defendant directing the defendant to hand over the peaceful vacant possession of the portion, including the Authorised Premises, of the Premises bearing No-1-A, Janpath, New Delhi-110011, in occupation of the Defendant.*
- ii) pass a decree of mandatory injunction in favor of the Plaintiff against the defendant directing the defendant to hand over the Keys of the rooms, garages, staff quarters, servant quarters, including of the Custodian Premises, with the Defendant of the Premises bearing No-1-A, Janpath, New Delhi- 110011.*
- iii) pass a decree of permanent injunction in favor of the Plaintiff against the defendant directing the defendant and his family members not to enter upon or otherwise interfere in any manner whatsoever with the possession of the Plaintiff Trust of the Premises bearing No-1-A, Janpath, New Delhi-110011.*
- iv) pass a decree of permanent injunction in favor of the Plaintiff against the defendant directing the defendant not to represent himself to be the owner of any portion of the premises bearing No-1-A, Janpath, New Delhi-110011 including the Said Premises or to create any type of third party interest including by way of sale mortgage, lease or license.*
- v) pass a decree of in favor of the Plaintiff against the defendant directing the defendant to pay Mesne Profits/ damages to the Plaintiff Trust for illegal use and occupation of the Said Property @ 12,000/= per month with effect from February, 2006 till actual physical vacating and handing over of the Said*



2024:DHC:2966



*Premises along with a interest @ 24 per annum from the date of accrual till the actual payment of such damages.
vi) cost of the Present suit from the Defendant.”*

11. Sh. Shivinder Singh, the defendant in the Subject Suit, filed his written statement, pleading therein that he was in possession of the Suit Property in his own independent right and denying the formation of any legally effective Trust. It was also pleaded in the written statement that the Subject Suit is actually a Suit seeking recovery of possession and the respondent no.1 ought to have paid ad-valorem court fees as per Section 7(v)(e) of the Court Fees Act, 1870 (hereinafter referred to as the ‘Court Fees Act’) on the market value of the premises in dispute.

12. The respondent no.1/plaintiff filed its rejoinder, wherein it was alleged that after the termination of the license, there is no need for bringing a Suit for possession, and that in case of a license, while the actual occupation remains with the licensee, the control or possession of the property is with the licensor, that is, the respondent no.1 herein, through its licensee / the defendant in the Suit, and that the possession of the property would be deemed to be with the licensor/ respondent no.1 Trust through the licensee / the defendant in the Subject Suit, and as such, the court fees is not required to be paid under Section 7(v)(e) of the Court Fees Act.

13. Thereafter, the following issues were framed by the learned Trial Court on 24.05.2007: -



- “i. Whether the plaintiff is entitled to claim the relief of mandatory injunction, as prayed for in para 33(i) of the plaint. OPP*
- ii. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for in para 33(ii) of the plaint. OPP*
- iii. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for. OPP*
- iv. Whether the plaintiff is entitled to claim damages, If so at what rate and for what period. OPP*
- v. Whether the suit as framed is not maintainable. OPD*
- vi. Whether the plaintiff has no cause of action. OPD*
- vii. Whether the plaint has not been properly verified by the plaintiff. If so, its effect. OPD*
- viii. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction. OPD*
- ix. Whether the suit is bad for misjoinder of parties. OPD*
- x. Whether the defendant is occupying the property in dispute in his own independent right, If so, its effect. OPD*
- xi. Whether the suit has not been filed by a duly authorized person. If so, its effect. OPD*
- xii. Relief”*

(Emphasis supplied)

14. Additional issues were framed by the learned Trial Court, on 16.04.2009, as under: -

- “i. Whether the suit filed by the plaintiff for all intents and purposes is for recovery of possession of the suit property, which as per plaintiff's own admission is in possession of the defendant?*
- ii. Whether the relief of possession claimed by the plaintiff is not consequential to the relief of mandatory injunction and substantive relief claimed by the plaintiff?*
- iii. Whether the true criteria for determining the question of court fee in the present case is*



the substance of relief claimed as disclosed by the plaint, taken as a whole and not merely the form in which the relief claimed is expressed?
iv. *Whether the suit for ejectment of the defendant upon revocation or termination of his license is a suit for recovery of possession?*
v. *Whether the plaintiff is liable to pay court fee on the basis of market value of the suit property which is over Rs 40 Crores?*
vi. *Whether in view of the issue above, this Hon'ble court has pecuniary jurisdiction to entertain and try the suit?*
vii. *Whether the suit as framed has not been properly valued for the purposes of court fee and jurisdiction?*
viii. *Whether the suit as framed is liable to be dismissed/ rejected by the Hon'ble court?"*

15. The respondent no.1/plaintiff filed its evidence before the learned Trial Court and was cross-examined. The evidence of the respondent no. 1 stands closed before the learned Trial Court.

16. While the Suit was fixed for recording the evidence of the defendant, the respondent no.1 filed an application, in November 2020, under Order XV-A read with Section 151 of the CPC, praying for, *inter alia*, a direction to the petitioners herein to pay/deposit damages at the rate of Rs.4,50,000/- per month from the date of enactment of the Order XV-A of the CPC, that is, 12.11.2008, and continue to deposit such amount during the pendency of the Subject Suit.

17. The petitioners herein filed a reply denying that the Suit Property can fetch a rent of Rs.4,50,000/- per month and also denying the applicability of the provisions of Order XV-A of the CPC to the Suit, and stated that the petitioners are in lawful possession of the Suit



Property. It was also alleged that the application is barred by limitation.

18. The learned Trial Court, by the Impugned Order has allowed the Application filed by the respondent no.1 herein under Order XV-A read with Section 151 of the CPC, directing the petitioners herein to make payment of Rs.2,00,000/- per month to the respondent no.1 from the date of the enactment of Order XV-A of the CPC, that is, 12.11.2008. The learned Trial Court directed that the entire arrears at the rate of Rs.2,00,000/- per month, from 12.11.2008 till 23.01.2023, shall be deposited within six months positively with the learned Trial Court, and the petitioners shall continue to deposit such amount till disposal of the Subject Suit.

19. The petitioners being aggrieved of the above Order have filed the present petition.

Interim Order in this Petition:

20. On 17.08.2023, this Court directed that as part arguments in the present petition have been addressed, the learned counsels for the parties have assured this Court that the enforcement of the Impugned Order will not be prayed for before the learned Trial Court, however, the learned Trial Court will proceed with other proceedings in the Subject Suit.

Submissions of the Learned Senior Counsel for the Petitioners:

21. The learned senior counsel for the petitioners submits that the learned Trial Court has erred in not considering the fact that the Subject Suit is not a Suit for possession and is only a Suit for



2024:DHC:2966



mandatory injunction, therefore, the provisions of Order XX Rule 12 of the CPC are not applicable. Placing reliance on the judgments of this Court in *Cosmos Infra Engineering (I) Ltd. & Ors. v. Tirupati Buildings & Offices (P) Ltd. & Ors.*, 2016 SCC OnLine Del 6378; *Sham Lal Kapoor v. Joginder Lal Kuthiala & Ors.*, 2017 SCC OnLine Del 9130; and, *Chander Mohan Chadha v. Singer India Ltd. & Ors.*, Manu/DE/3610/2017, he submits that provisions of Order XX Rule 12 of the CPC are not applicable in the absence of a relief of recovery of possession of the property.

22. He further submits that a Suit for mandatory injunction cannot be considered as a Suit for possession. Placing reliance on the judgment of the Supreme Court in *Bachhaj Nahar v. Nilima Mandal & Anr.* (2008) 17 SCC 491, he submits that in Civil Suits, the grant of relief is circumscribed by various factors like the court fees, limitation, parties to the Suit, etc.. He submits that the respondent no.1 had valued the Subject Suit for the purposes of court fees and jurisdiction only as a Suit for mandatory injunction and not as a Suit for possession. He submits that if the respondent no.1 had claimed relief of possession, the respondent no.1 had to value the Suit for the purposes of court fees and jurisdiction according to the market value of the Suit Property, which is admittedly more than Rs. 2 Crores and, therefore, the learned Trial Court would not have the jurisdiction to try the Subject Suit. He submits that the respondent no.1 has, in fact, in the rejoinder as well reiterated that the Subject Suit is not a Suit for possession.



2024:DHC:2966



23. He submits that the respondent no.1 not only chose to file a Suit for mandatory injunction as opposed to a Suit for possession, but has also elected to continue with the same as such, despite being objected to by the petitioners herein. Placing reliance on the judgment of this Court in *Sarup Singh v. Daryodhan Singh*, 1971 SCC OnLine Del 316, he submits that having not elected to file a Suit for possession and having not valued the Suit for the purposes of court fees and jurisdiction as such, the respondent no.1 cannot have the benefits that would arise only from filing of a Suit for possession. He reiterates that the nature of the Suit filed is important not only for the purpose of court fees but also for the purpose of jurisdiction of the learned Trial Court.

24. He submits that the reliance of the respondent no.1 on the judgment of the Supreme Court in *Sant Lal Jain v. Avtar Singh*, (1985) 2 SCC 332, for contending that where the plaintiff files a Suit for mandatory injunction with promptitude, the said Suit will be said to be, in effect, one for possession, is also fallacious inasmuch as the said judgment is not a precedent for a proposition that all provisions/proceedings which are applicable to a Suit for possession would be equally applicable to a Suit for mandatory injunction also. He submits that the provisions relating to the Suit for mandatory injunction as opposed to a Suit for possession, from institution to execution, are different and distinct, and the said difference is well defined in the Specific Relief Act, 1963, the CPC, the Court Fees Act, the Suits Valuation Act, 1887, etc.. He submits that the nature of these Suits is



not at par and cannot be said to be synonyms and, therefore, they cannot be a substitute for each other.

25. Placing reliance on the judgment of the Supreme Court in *Joseph Severance v. Benny Mathew*, (2005) 7 SCC 667, he submits that where, after the termination of the license, the licensor does not take prompt action to evict the licensee, then the licensor has to sue for recovery of possession, as the ex-licensee is treated as a trespasser. However, where the licensor acts with promptitude, a Suit for mandatory injunction may be maintainable, as in that case, the licensee cannot be treated as a trespasser. He submits that, therefore, a Suit for mandatory injunction may be maintainable against the defendant only when the defendant cannot be treated as a trespasser/unauthorised occupant. He submits that in *Joseph Severance* (Supra), the Supreme Court has observed that a Suit for mandatory injunction and a Suit for possession are different and are not synonymous.

26. The learned senior counsel for the petitioners submits that it is the nature of the Suit which will determine as to whether an application under Order XV-A of the CPC can be filed or not, and not the nature of the decree that may finally be passed in the Suit, as on the passing of a final decree, the provisions of Order XV-A of the CPC would come to an end. He submits that a decree includes a decree of dismissal also.

27. He submits that even if it is assumed, though not admitted, that the provisions of Order XV-A of the CPC are applicable to the facts of the present case, then also it is only 'the rent claimed in the suit' that can be granted to the plaintiff. He submits that the rent claimed in the



2024:DHC:2966



Subject Suit is only Rs.12,000/- per month and, therefore, the respondent no.1 cannot claim any amount greater than Rs.12,000/- per month in the application filed under Order XV-A of the CPC. He submits that the interlocutory orders/applications act as an aid to the main proceedings and are not for the purpose of substituting the main proceedings. Relief granted on such an application cannot go beyond the relief prayed for in the Suit itself.

28. He submits that the reliance of the respondent no.1 on the judgment of this Court in ***Raghubir Rai v. Prem Lata & Anr.***, 2014 SCC OnLine Del 3045, is fallacious, as the Court therein held that an application under Order XV-A of the CPC has to be decided on the basis of evidence brought on record and an order thereon cannot be passed at the whims and fancies of the plaintiff. He submits that in the present case, the respondent no.1 had not proved or placed on record any document or evidence to establish that the Suit Property could be let out at the rate as claimed in the application under Order XV-A of the CPC or even at the amount decided by the learned Trial Court. He submits that the respondent no.1 had already led and closed its evidence when the application at hand was filed, however, nothing had been brought on record by the respondent no.1 to prove that the premises in dispute could be let out at the rent of Rs.4,50,000/- per month. He submits that, therefore, the plaintiff will not be entitled to the said amount, even at the time of the passing of the final decree, and therefore, the question of the learned Trial Court awarding the same at an *interim* stage cannot arise. He submits that the *interim* relief cannot be larger than the final relief.



29. He submits that the reliance of the respondent no.1 on the judgment of the Supreme Court in ***Gopalakrishna Pillai & Ors. v. Meenakshi Ayal & Ors.***, AIR 1967 SC 155, for contending that the learned Trial Court has the jurisdiction to grant mesne profits and to direct that an inquiry be conducted into the future mesne profits, even if not asked for, is fallacious. He submits that the said judgment is not an authority on the ambit and scope of the relief that can be granted under Order XV-A of the CPC. He reiterates that the relief under Order XV-A of the CPC, cannot be more than the 'rent claimed in the suit'.

30. He further submits that the contention of the respondent no.1 that under Order XX Rule 12 of the CPC, no evidence has to be led in the Suit to prove the mesne profits and that an inquiry under Order XX Rule 12 of the CPC is to be held separately where the opportunity to lead evidence on the quantum of mesne profits would be available, cannot come to the aid of the plaintiff, as the learned Trial Court, at this stage, was not deciding the issue of grant of mesne profits. He submits that a specific issue on the entitlement of the respondent no.1 to claim damages and if so, at what rate and for what period, has already been framed by the learned Trial Court in the Subject Suit. He submits that the respondent no.1 has already led its evidence on all the issues before the learned Trial Court, without reserving any right to lead any evidence on the issue of damages later. He submits that, therefore, the respondent no.1 cannot be given another opportunity to lead any evidence on the aspect of damages on the plea of inquiry under Order XX Rule 12 of the CPC.



2024:DHC:2966



31. Lastly, he submits that the claim of the respondent no.1 in the said application under Order XV-A of the CPC was *ex facie* barred by limitation. He submits that Article 137 of the Schedule to the Limitation Act, 1963 lays down that the period of limitation for filing an application for which no period of limitation is provided elsewhere, is three years from the date when the right to apply accrues. He submits that in the present case, the right to file an application under Order XV-A of the CPC, if any, accrued to the respondent no.1 on the enactment of Order XV-A of the CPC, that is, on 12.11.2008, however, the application at hand was filed only in November 2020, claiming a direction to pay user charges with effect from 12.11.2008. He submits that, therefore, the said claim is hopelessly barred by limitation. In support, he has placed reliance on the judgment of the Supreme Court in *State of Kerala v. Sridevi & Ors.*, (2000) 9 SCC 168, and of this Court in *Lal Chand Public Charitable Trust v. Delhi Wakf Board & Ors.*, 2011 SCC OnLine Del 5472.

Submissions of the Learned Senior Counsel for the Respondents:

32. The learned senior counsel for the respondents, at the outset, submits that a Suit for mandatory injunction against an ex-licensee to hand over peaceful and vacant possession is, in law and in effect, a Suit for seeking possession/eviction. He submits that Mrs. Mahinder Jaspal Singh was merely a licensee in the Suit Property and once the licence ended, and as the legal possession of the Suit Property always remained with the respondent no.1, the Subject Suit praying *inter alia* for a decree of mandatory injunction was filed. He submits that such a



2024:DHC:2966



Suit has not only been held to be maintainable in view of Section 39 of the Specific Relief Act, 1963 but it has also been held by the Supreme Court that in such a Suit, the Court can direct the respondent to deliver possession of the immovable property, failing which it will be open to the Decree Holder to execute the decree and obtain possession of the immovable property. In support, he places reliance on the judgment of the Jammu and Kashmir High Court in *Th. Milka Singh & Ors. v. Th. Diana & Ors.*, 1964 SCC OnLine J&K 8; of the Supreme Court in *Sant Lal Jain* (Supra), and in *Bharat Bhushan Gupta v. Pratap Narain Verma & Anr.*, (2022) 8 SCC 333; and of this Court in *Jugal Kishore v. Des Raj Seth*, 1968 SCC OnLine Del 120, and in *Prabhu Dayal v. Roop Kumar & Ors.*, AIR 2005 Del 144. He submits that, in fact, the Defendant in the Subject Suit had himself taken a stand in paragraph 7 of the written statement that the Subject Suit is, in effect, a Suit for possession and, therefore, the petitioners cannot be allowed to approbate and reprobate.

33. He submits that the petitioners' contention that because the court fees on a Suit for Mandatory Injunction is a fixed court fee, therefore, the Suit cannot be one for possession, is erroneous. He submits that it is not the Court fee payable that determines the nature of the Suit. He submits that the Court has to see whether, on a reading of the plaint as a whole, it is in substance a Suit for possession/eviction, irrespective of the use of the words 'mandatory injunction' in the prayer clause.

34. He submits that a Suit for recovery of *de facto* or actual physical possession would fall within the ambit of Order XX Rule 12



of the CPC. He submits that a Suit for mandatory injunction against an ex-licensee is a Suit for recovery of actual or *de facto* possession, and there is no need for the owner to file a Suit for juridical possession as envisaged under Section 6 of the Specific Relief Act. He submits that Order XX Rule 12 of the CPC encompasses Suits for recovery of *de facto* or actual possession as well, more so since the liability to pay mesne profits attaches with actual occupation of the premises. In support, he places reliance on the judgment of the Supreme Court in ***Lucy Kochuvareed v. P. Mariappa Gounder & Ors.***, (1979) 3 SCC 150.

35. He submits that the words used under Order XV-A of the CPC are wider than Order XX Rule 12 of the CPC, inasmuch as for Order XV-A of the CPC to apply, the only requirement is that the Suit should be a Suit by the owner/lessor for eviction. He submits that it cannot be denied that the Subject Suit, as framed and read as a whole, is a Suit for eviction of an unauthorized occupant, that is, the petitioners herein, and that being so, the provisions of Order XV-A of the CPC shall be applicable.

36. He submits that this Court in ***Sant Kirpal Singh v. Sobha Singh & Sons Pvt. Ltd.***, 2022 SCC OnLine Del 1069, has specifically considered the issue as to whether a decree of eviction can be passed in a Suit for mandatory injunction. He submits that it was specifically argued before this Court in ***Sant Kirpal Singh*** (Supra) that in the absence of a specific relief of possession having been sought, a Suit for injunction cannot be extended to grant possession. He submits that following the judgment of the Supreme Court in ***Sant Lal Jain***



(Supra), this Court held that the relief of possession in such a case would be a corollary to the grant of injunction and that the relief of possession would be inherent in the injunction, as otherwise, it would lead to multiplicity of Suits. He submits that a similar view has also been taken by the Punjab & Haryana High Court in **Gurcharan Singh & Anr. v. Gurudwara Shri Singh Sabha (Regd.)**, 2004 SCC OnLine P&H 235.

37. Placing reliance on the judgment of this Court in **Raghubir Rai** (Supra) and of the High Court of Bombay in **Colaba Central Co-operative Consumer Wholesale and Retail Stores Ltd. v. Kusumben Kantilal Shah & Ors.**, 2003 SCC OnLine Bom 875, he submits that an Order under Order XV-A of the CPC is an interlocutory Order, which is subject to the final determination under Order XX Rule 12 of the CPC; it is in the aid of the final relief that can be granted under Order XX Rule 12 of the CPC. He submits that the provision of Order XX Rule 12 of the CPC itself makes it clear that after the Suit has been filed, the limitation for *pendente lite* mesne profits stops running. He submits that, in view of the object of the said provision, the same principle will necessarily apply to provisions of Order XV-A of the CPC.

38. He submits that future mesne profits can never be pegged at the date of filing of the Suit. He submits that, in fact, future mesne profits need not even be claimed in the Suit, as the cause of action has not arisen at the time of filing of the Suit. He submits that there is a distinction between the cause of action that has already accrued and a future cause of action; it is only the former that needs to be



2024:DHC:2966



specifically pleaded. He submits that, therefore, even in the absence of a specific prayer for future mesne profits, the Court has the power to determine the same and pass a decree. In support, he places reliance on the judgment of the Supreme Court in *Gopalakrishna Pillai & Ors.* (Supra) and of this Court in *Santosh Arora & Ors. v. M.L. Arora*, 2014 SCC OnLine Del 3005.

39. He submits that the Plaintiff cannot be bound by the amount of mesne profit claimed for the future, as the plaintiff is not even supposed to know the extent of the same. He submits that the future mesne profits cannot be pegged at what has been sought in the plaint, and it is the duty of the Court to grant mesne profits commensurate with the market rent. Placing reliance on the judgment of this Court in *Raghubir Rai* (Supra), he contends that under Order XV-A of the CPC, the direction has to be to pay/deposit amount commensurate with the market rent of the immovable property itself or the properties adjoining the same.

40. He submits that Order XV-A of the CPC is in the nature of an interlocutory relief, which is to be adjusted against the final relief that may be granted at the time of Decree or after an inquiry under Order XX Rule 12 of the CPC. He submits that it being so, the standard of proof is necessarily *prima facie*, and the threshold of material required would be much lower than that required under Order XX Rule 12 of the CPC. Even some evidence of contemporaneous lease is enough, as held in *Roshan Lal Vegetable Products (P) Ltd. v. Param International & Anr.*, 2011 SCC OnLine Del 325. He submits that the Court can also take judicial notice of the exorbitant rents in Delhi,



especially in the Central parts of Delhi, to determine the amount to be paid/deposited by the defendant. In support, he places reliance on the judgments of this Court in *Consep India (P) Ltd. v. CEPCO Industries (P) Ltd.*, 2010 SCC OnLine Del 1349; *Usha Gupta v. Bank of India*, 2019 SCC OnLine Del 10020; and *Paramjeet Singh Kalsi v. Manoj Shukla*, 2019 SCC OnLine Del 6420.

41. He submits that the learned Trial Court has noticed that the respondent no.1 had made specific averments in paragraph 8 of the Application under Order XV-A of the CPC in respect of the rent being earned by the respondent no.1 from the adjoining portions of the same property at the rate of Rs.241/- per Sq. meters. He also places reliance on the Lease Deeds filed as additional documents in this petition, to submit that the rate determined by the learned Trial Court is reasonable.

42. He submits that in terms of Section 2(12) of the CPC, interest is an integral part of the mesne profits. The mesne profits from the year 2008 would be payable with interest for the period of 15 years. The arrears on the basis of the market rate prevalent in the previous years, along with interest, would certainly be more than Rs.2 lacs per month, as has been ordered by the learned Trial Court to be paid by the petitioners in the Impugned Order.

43. He submits that, as has been observed by this Court in *Santosh Arora* (Supra), the determination of mesne profits is a mandate to the Court under Order XX Rule 12 of the CPC, and hence, it is the duty of the Court to come to a finding on the mesne profits, which exercise may even require some amount of guesswork. He submits that thus,



2024:DHC:2966



even in the absence of any material, the Court is dutybound to determine the mesne profits.

44. He submits that the future mesne profits cannot be limited by a cap of Rs.12,000/- as is pleaded in the Suit, which was the license fee decided in the year 2004. The same is liable to a periodic increase of at least 15%, which would also make it Rs.1,70,781/- per month, as of today.

45. With respect to the evidence of the respondent no.1 being completed before the learned Trial Court, he submits that Order XX Rule 12 of the CPC makes it clear that even at the stage of the decree, the Court may Order an inquiry into the determination of mesne profits. It will be only at that stage that evidence as to the market rent will be taken, if the evidence already on record is not sufficient, and the final decree in respect of mesne profits will be passed in accordance with the result of such an inquiry.

46. Placing reliance on *Harihar Nath & Ors. v. State Bank of India & Ors.*, (2006) 4 SCC 457, he submits that an application under Order XV-A of the CPC is not subject to any period of limitation.

47. He submits that the Defendant in the written statement before the learned Trial Court has taken a vague and moonshine defence of having some independent right in the Suit Property and even of adverse possession. The Defendant has not paid anything to the respondent no.1 during the pendency of the Suit and has, in fact, ensured that the trial has dragged on for almost 19 years. He submits that allowing such acts of the Defendant would defeat the entire object



and purpose of the provisions of Order XX Rule 12 of the CPC as well as Order XV-A of the CPC.

48. He submits that the entire defence of the Defendants is in the teeth of Section 14 of the Trusts Act, 1882 inasmuch as, the mother of the Defendant was admittedly a Trustee of the respondent no.1 Trust that owns the Suit Property. Placing reliance on the judgment of the Supreme Court in ***Sant Lal Jain*** (Supra), he submits that it is not open to the licensee, during the subsistence of the license or in the Suit for recovery of possession of the property instituted after the revocation of the license, to set up a title to the property in himself or anyone else. He submits that it is the duty of the licensee to surrender the vacant and peaceful possession of the property as a licensee and then seek his appropriate remedy separately, in case he/she has acquired title to the property subsequently through some other person.

Analysis & Findings:

49. I have considered the submissions made by the learned counsels for the parties.

50. Order XX Rule 12 CPC of the reads as follows: -

“12. Decree for possession and mesne profits.—(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree—

(a) for the possession of the property;

(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent.

(ba) for the mesne profits or directing an inquiry as to such mesne profits;



(c) directing an inquiry as to rent or mesne profits from the institution of the suit until—

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.”

51. A Division Bench of this Court, in **Santosh Arora** (Supra), has observed that Order XX Rule 12 of the CPC permits a claim for future mesne profits, that is, for a relief, the cause of action whereof is not yet accrued to the plaintiff as on the date of the institution of the Suit, however, such relief must be coupled with the relief of recovery of possession of the immovable property.

52. The above view has been reiterated by this Court in **Cosmos Infra Engineering (I) Ltd.** (Supra); **Sham Lal Kapoor** (Supra); and **Chander Mohan Chadha** (Supra).

53. In the present case, therefore, it has to be determined whether a Suit for mandatory injunction, as has been filed by the respondent no.1 herein, is a Suit for possession, thereby satisfying the above condition.

54. In **Th.Milka Singh** (Supra), the High Court of Jammu and Kashmir considered the maintainability of a Suit for mandatory



injunction in effect to seek possession of the immovable property from the defendants. The Court observed as under: -

“2..... In my opinion, before deciding the question as to under which clause the present suit would fall it will be necessary to determine the real status of a licensee. It is well settled that a licensee has no interest in the land and his possession is purely permissive. As early as 1673 Vaughan C.J. in Thomas v. Sorrell, 1673 Vaugh 330 described the status of a licensee thus:

“A dispensation or license properly passeth no interest nor alters or transfer property in anything, but only makes an action lawful, which without it had been unlawful.”

3. In Halsbury's Laws of England Volume 23, IIIrd Edition, p. 429, it is clearly mentioned that a mere license does not create any estate or interest in the property to which it relates; it only makes an act lawful which without it would be unlawful. Thus the status of a licensee is essentially different from that of a trespasser or a tenant. In fact; the possession of a licensee is not a juridical possession but only an occupation with the permission of the licensor. While the actual occupation remains with the licensee, the control or possession of the property is with the licensor through his licensee. This appears to us to be the real legal status of a licensee. This being the position, question is whether after termination of the license a licensee can be said to be a trespasser so as to drive the licensor to bring a suit for possession by evicting the licensee. In Winter Garden Theatre (London) Ltd. v. Millennium Productions, Ltd., (1947) 2 All ER 331, Viscount Simon, while discussing the status of a licensee quoted the observations of Vaughan C.J. in 1673 Vaugh 330 and observed as follows:



“The effect of a licence by A to permit B to enter upon A's land or to use his premises for some purpose is, in effect, an authority which prevents B from being regarded as a trespasser when he avails himself of the license.”

*4. From these observations, it is clear that by accepting the status of a licensee a person cannot be treated as a trespasser as long as his occupation of the premises remains. Even if the licence is terminated he cannot be treated as a trespasser simpliciter unless he has left the premises and re-occupied it later on. The reason for this seems to us to be very simple. There is always an element of *anmus possidendi* in the possession of a trespasser which is completely absent in the possession of a licensee. After the termination of the license while the licensee may continue to occupy the premises, the possession of the property would be deemed to be in the licensor through the licensee. In these circumstances, therefore, it cannot be said that the moment the licence is terminated, the licensee's possession becomes that of a trespasser. I am fortified in my view by the observations of Mukherjee, J. in AIR 1958 Cal 179 where their Lordships have observed as follows:*

“In the present case the plaintiffs alleged and established that the defendant respondent was merely a licensee. That being the case the possession of the house lay with the appellants through the respondent and not with the respondents who had no independent or separate interest in the house.””

55. The above judgment was cited with approval by the Supreme Court in ***Sant Lal Jain*** (Supra), observing as under: -

“7. In the present case it has not been shown to us that the appellant had come to the Court with the suit for mandatory injunction after any considerable delay which will disentitle



him to the discretionary relief. Even if there was some delay, we think that in a case of this kind attempt should be made to avoid multiplicity of suits and the licensor should not be driven to file another round of suit with all the attendant delay, trouble and expense. The suit is in effect one for possession though couched in the form of a suit for mandatory injunction as what would be given to the plaintiff in case he succeeds is possession of the property to which he may be found to be entitled. Therefore, we are of the opinion that the appellant should not be denied relief merely because he had couched the plaint in the form of a suit for mandatory injunction.

8. The respondent was a licensee, and he must be deemed to be always a licensee. It is not open to him, during the subsistence of the licence or in the suit for recovery of possession of the property instituted after the revocation of the licence to set up title to the property in himself or anyone else. It is his plain duty to surrender possession of the property as a licensee and seek his remedy separately in case he has acquired title to the property subsequently through some other person. He need not do so if he has acquired title to the property from the licensor or from someone else lawfully claiming under him, in which case there would be clear merger. The respondent has not surrendered possession of the property to the appellant even after the termination of the licence and the institution of the suit. The appellant is, therefore, entitled to recover possession of the property. We accordingly allow the appeal with costs throughout and direct the respondent to deliver possession of the property to the appellant forthwith failing which it will be open to the appellant to execute the decree and obtain possession.”



56. Reference in this regard should also be made to the judgment of the Supreme Court in *Bharat Bhushan Gupta* (Supra).

57. In *Joseph Severance* (Supra), the Supreme Court emphasized that for a Suit for mandatory injunction to be maintainable against an ex-licensee, it must be filed within a reasonable time of the termination of the license. Where, after the termination of the license, the licensor does not take prompt action to evict the licensee from the premises, the ex-licensee may be treated as a trespasser, and the licensor may have to sue for recovery of possession. Reference in this regard can also be made to the judgment of the Division Bench of this Court in *Prabhu Dayal* (Supra).

58. From the above judgments, it would be evident that where the Suit is filed against a person claiming such person to be an ex-licensee, and such Suit is filed within a reasonable time of the termination/revocation of the license, a Suit for mandatory injunction to seek possession of the property from the ex-licensee is maintainable. The above is founded on the principle that the possession of the licensee is, in fact, that of the licensor and that the licensee has no independent right in the immovable property.

59. The learned senior counsel for the petitioners, placing reliance on the replication filed by respondent no.1 and also the Order dated 13.10.2006 of the learned Trial Court, has submitted that in spite of an objection of the petitioners that the Suit is, in fact, one for seeking recovery of possession, the respondent no.1 maintained that it is not so and, in fact, on that basis, even an application filed by the petitioners under Order VII Rule 11 of the CPC has been dismissed by the



learned Trial Court. He submitted that the respondent no. 1 cannot, now, be allowed to contend that the Suit in question is one for possession. I am unable to agree with the said submission. In the application under Order VII Rule 11 of the CPC, the petitioners had challenged the maintainability of the Suit on account of Court Fee payable and on the pecuniary jurisdiction of the learned Trial Court, contending that as the Suit was one seeking possession of an immovable property, it should be valued for purposes of court fee and jurisdiction on basis of the market value of the Suit Property. The application was, however, dismissed by the learned Trial Court. Subsequent thereto, issues in this regard have been framed by the learned Trial Court and shall be answered on consideration of the evidence and on hearing the parties. The same, therefore, can have no relevance to the present proceedings.

60. At this stage, reference may also be made to the judgment of the Full Bench of this Court in ***Jugal Kishore*** (Supra), wherein, though in relation to the court fees that is payable on such a Suit, it has been held that where the plain reading of the plaint culminating in the prayer clause shows the plaint to be, in substance, praying for possession and not for a mere mandatory injunction, it would be treated as a Suit for Possession. The Court observed that *“Merely because the expression "mandatory injunction" is used in the prayer clause, cannot always be conclusive against the prayer contemplating a decree for possession, and if reading the plaint as a whole, it becomes clear that the plaintiff is seeking possession of the property,*



2024:DHC:2966



then it would be open to the Court to hold the suit to be one for possession”.

61. In ***Bharat Bhushan Gupta*** (Supra), the Supreme Court, however, while reiterating that a Suit seeking a decree of mandatory injunction obliging a licensee to remove themselves and their belongings from the licensed premises is maintainable, further held that a plea that such a Suit is required to be valued as per market value of the property irrespective of the nature of relief claimed, if accepted, would render the whole scheme of the Court Fee Act concerning suit valuation with reference to the nature of relief going haywire, and is liable to be rejected. Reference in this regard can also be made to the judgment of this Court in ***Padmavati Mahajan v. Yogender Mahajan & Anr.*** 2008 SCC OnLine Del 982.

62. In ***Sant Kirpal Singh*** (Supra), a learned Single Judge of this Court was again considering a Suit praying for a decree of mandatory and perpetual injunction, and in answering an issue whether a decree of eviction could be passed in a Suit for mandatory injunction, relying on the judgment of the Supreme Court in ***Sant Lal Jain*** (Supra), held that the relief of possession would be inherent in the injunction, as otherwise, it would lead to multiplicity of Suits and the attendant delay, trouble, and expenses.

63. From the above, it would be apparent that a Suit praying for a decree of mandatory injunction against an ex-licensee is, in effect, in the nature of a Suit for recovery of possession. It cannot be a proper Suit for recovery of possession only because the possession is deemed to be in the hands of the licensor itself.



2024:DHC:2966



64. The learned senior counsel for the petitioners, placing reliance on the judgment of the Full Bench of this Court in *Sarup Singh* (Supra), has submitted that there is a marked difference between a decree of mandatory injunction and a decree of possession. He has submitted that a decree of mandatory injunction cannot be enforced as a decree of possession. However, in my view, the same can have no relevance to the issue at hand. For purposes of Order XX Rule 12 of the CPC, the Suit for mandatory injunction against an ex-licensee is to be considered as one for the recovery of possession. Any other interpretation of this provision would, in fact, compel the licensor, in whose possession the legal possession of the property is already vested, to seek possession of the Suit Property from his ex-licensee and pay court fee accordingly, failing which to give up his rights to a claim of future mesne profits. This can never be the intent of the law. Order XX Rule 12 of the CPC merely states that where the Suit is '*for the recovery of possession of the immovable property*'; such Suit, in my opinion, can be in the form of a mandatory injunction or a proper Suit for possession, and for rent or mesne profits. In such a Suit, the Court may pass a decree, including for the mesne profits or directing an inquiry as to determining such mesne profits. It cannot, therefore, be accepted that merely because the Suit prays for a decree of mandatory and permanent injunction against an alleged ex-licensee, as opposed to a decree of possession, the provision of Order XX Rule 12 of the CPC shall not be attracted. Provision of Order XX Rule 12 of the CPC shall be attracted to such a Suit provided the plaintiff is able to prove itself to be entitled to the relief claimed.



65. As far as the judgment of **Sarup Singh** (Supra), I must also note that in **Gurcharan Singh & Anr.** (Supra), the High Court of Punjab and Haryana has held that with the insertion of the Explanation to sub-Rule (5) in Order XXI Rule 32 of the CPC based on the recommendations of the 154th Report of the Law Commission of India, the judgment of this Court in **Sarup Singh** (Supra) has been watered down. The Court has observed as follows: -

“15. It is in the view of the afore-mentioned historical perspective that the order dated 23rd February, 2004 passed by the Civil Judge has to be examined. The expression act required to be done has been extended to prohibitory as well as mandatory injunctions. The view taken by the Full Bench of Delhi High Court has been treated as a narrower view because that was a case, in which the decree against the licensee was to quit and vacate the premises but the High Court by taking a narrower view expressed its inability to invoke order 21 Rule 32(5). Therefore, the question posed by the Law Commission, which led to the recommendation for adopting wider view has been accepted by inserting explanation to sub-rule (5). The decree-holder is not required to file another suit when he has already acquired a decree in his favour by spending much time and expense. The Court, therefore, would be fully competent to direct that the act required to be done may be done so far as practicable either by the decree-holder himself or by some other person appointed by the Court at the cost of judgement-debtor. In the instant execution of the decree for mandatory injunction, where the possession is sought from a licensee. The aforesaid order is consistent with the spirit of law and the explanation added as per the recommendation made by the Law Commission. The direction to vacate the



premises situated in the Gurudwara Sahib where the judgement-debtor petitioners were allowed to stay being the sewadars is another form and method to direct hand over of possession. Tweedledee is Tweedledum. It can mean nothing else except the handing over of possession and, therefore, the wider view as suggested by the Law Commission has to be followed because it serves the ends of justice. The decree cannot be defeated by raising technical objections. It is well settled that technicalities of law should be construed to advance justice and not to defeat justice. With utmost deference to the ld. Judges, I am of the view that the ratio of the judgement of the Full Bench of Delhi High Court in Sarup Singh's case (supra) stands considerably watered down by Explanation added to sub-rule 5 of Rule 32 of Order 21. The wider view preferred by Allahabad High Court in Harihar Pandev's case (supra) has rightly held that the decree holder cannot be compelled to file another suit for it would multiply litigation which course public policy would discourage. Courts cannot be party to the illegal designs of a Judgement debtor who wishes to carry on with his illegal possession. The ground realities propagated by Realist School of Thoughts led by Jurist like Karl Llewellyn must dawn on the parties to litigation and substantial justice must be done. Therefore, I do not find any ground to interfere with the order passed by the Civil Judge. The petition is liable to be dismissed."

66. Having held that Order XX Rule 12 of the CPC shall be attracted even if the Suit is filed for seeking a decree of mandatory and permanent injunction against an ex-licensee, I shall now first consider the general principles that govern Order XX Rule 12 of the CPC.

67. In ***Lucy Kochuvareed*** (Supra), the Supreme Court explained the general principles relating to the liability for mesne profits, as under: -



“24. Mesne profits being in the nature of damages, no invariable rule governing their award and assessment in every case, can be laid down and “the court may mould it according to the justice of the case”. Even so, one broad basic principle governing the liability for mesne profits is discernible from Section 2(12) of the Code of Civil Procedure which defines “mesne profits” to mean “those profits which the person in wrongful possession of property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession”. From a plain reading of this definition, it is clear that wrongful possession of the defendant is the very essence of a claim for mesne profits and the very foundation of the defendant's liability therefor. As a rule, therefore, liability to pay mesne profits goes with actual possession of the land. That is to say, generally, the person in wrongful possession and enjoyment of the immovable property is liable for mesne profits. But, where the plaintiff's dispossession, or, his being kept out of possession can be regarded as a joint or concerted act of several persons, each of them who participates in the commission of that act would be liable for mesne profits even though he was not in actual possession and the profits were received not by him but by some of his confederates.”

68. In **Santosh Arora** (Supra), a Division Bench of this Court reiterated that even if no claim/prayer for recovery of future mesne profits from the date of the institution of the Suit till the date of delivery of possession is made, Order XX Rule 12 of the CPC mandates the Court to direct such an inquiry into future mesne profits. It was further held that what is to be the rate of mesne profits, is to be



determined by evidence and is not a matter of contract. It was held that the plaintiff, in spite of making a specific claim for future mesne profits at a particular amount, would be entitled to such higher amount as may be found due, since he was not obliged to make such a claim for future mesne profits and not obliged to pay court fees thereon, and could not have in any case known at what rate he would be entitled to the future mesne profits. The Court placed reliance on the judgment of the Supreme Court in **Gopalakrishna Pillai** (Supra) amongst others. I may quote from the judgment, as under:

“19. The true legal position may be summed up as under:-

A. The cause of action for a relief of recovery of mesne profits is separate and distinct from a cause of action for the relief of possession (See Gurudwara Baba Zorawar Singh and Baba Fateh Singh Ji Regd. Society Vs. Shri Piara Singh and Sons 141 (2001) DLT 228 (DB), Shri Prem Singh Verma Vs. Girdhari Lal Dhara MANU/DE/2207/2008 (DB), S. Santokh Singh Vs Gurbux Singh MANU/DE/0704/2001 (DB) & Syndicate Bank Vs. Raj Kumar Tanwar 154(2008) DLT 230(DB)).

B. Thus even if in a suit for recovery of possession of immovable property, the relief of mesne profits has not been claimed, a second suit lies for recovering mesne profits for the period subsequent to the filing of the suit for recovery of possession; of course for the recovery of mesne profits as far as within limitation. Reference in this regard can be made to Shiv Kumar Sharma v. Santosh Kumari (2007) 8 SCC 600.

C. However a claim for mesne profits for the period prior to the institution of the suit for recovery of possession according



to Channappa Girimalappa Jolad v. Bagalkot Bank AIR 1942 Bom 338 (DB) has to be made along with the suit for recovery of possession and cannot be made subsequent to the filing of the suit for recovery of possession but according to the majority judgment of the Full Bench of the Punjab & Haryana High Court in Sadhu Singh v. Pritam Singh AIR 1976 P&H 38 the same can be made by a separate suit as well.

D. Order 20 Rule 12 of the CPC requires the Court, in a suit for recovery of possession of immovable property and for rent or mesne profits, to, besides passing decree for possession, also pass a decree for mesne profits or direct an enquiry as to such mesne profits, for the period prior to the institution of the suit if claimed and if within limitation on the date of institution of the suit, and for the period, from the date of institution of the suit until delivery of possession.

E. The Supreme Court in R.S. Madanappa v. Chandramma AIR 1965 SC 1812 & Bhagwati Prasad v. Shri Chandramaul AIR 1966 SC 735 has held that where in a suit for recovery of possession a claim for recovery of mesne profits for the period till the date of institution of the suit is made, even if no claim/prayer for recovery of future mesne profits from the date of institution of the suit till the date of delivery of possession is made, Order 20 Rule 12 mandates the Court to direct such an enquiry into future mesne profits.

F. The reason for the aforesaid is not hard to fathom; the intent is to avoid multiplicity of suits for mesne profits for successive period after the date of the institution of the suit; each of such suits would have to be filed for recovery of mesne profits for a maximum period of three years, to avoid the defence of



the claim for mesne profits having become barred by time.

G. No claim for mesne profits can be allowed without first finding the defendant being in unauthorized occupation of the premises, as is evident from definition thereof in Section 2(12) of CPC.

xxxxx

24. Section 2(12) of the CPC defines the mesne profits of property as meaning those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profit. Thus, what is to be the rate of mesne profits, is to be determined by evidence and is not a matter of contract.

25. The Supreme Court in Gopalakrishna Pillai v. Meenakshi Ayal AIR 1967 SC 155 has held :-

“With regard to future mesne profits, the plaintiff has no cause of action on the date of the institution of the suit, and it is not possible for him to plead this cause of action or to value it or to pay court-fees thereon at the time of the institution of the suit..”

It is for this reason only that payment of Court Fees of future mesne profits decreed is a condition to the execution thereof and is not to be paid at the time of institution of the suit. At the time of institution of the suit and which often remain pending for long, it is not possible for the plaintiff to state as to what benefits the defendant in wrongful possession of the property would receive from time to time.

26. The question which arises is that if the plaintiff, without even making a specific claim for future mesne profits is in law entitled



thereto, as held in R.S. Madanappa & Bhagwati Prasad (supra) if makes a claim for future mesne profits at a particular rate, whether he is entitled to future mesne profits at the maximum of that rate only or if the same are determined/found to be due at a higher rate, would be entitled to such higher rate.

27. In our opinion the plaintiff in such a situation would be entitled to such higher rate since he was not obliged to make a claim for future mesne profits, not obliged to pay Court Fees thereon and could not have in any case known to future mesne profits at what rate he would be entitled to as observed by the Supreme Court in Gopalakrishna Pillai supra. Once it is held to be the duty of the Court under Order 20 Rule 12 to award future mesne profits even without a specific prayer in this regard, the specific prayer even if made by the plaintiff cannot limit the entitlement of the plaintiff to future mesne profits.”

69. This now brings me to Order XV-A of the CPC. The same is reproduced as follows: -

**“ORDER XV-A
STRIKING OFF DEFENCE IN A SUIT BY A
LESSOR**

(1) In any suit by a owner/lessor for eviction of an unauthorized occupant/lessee or for the recovery of rent and future mesne profits from him, the defendant shall deposit such amount as the court may direct on account of arrears upto the date of the order (within such time as the court may fix) and thereafter continue to deposit in each succeeding month the rent claimed in the suit as the court may direct. The defendant shall continue to deposit such amount till the decision of the suit unless otherwise directed.

In the event of any default in making the deposit as aforesaid, the Court may subject to



the provisions of sub-rule (2) strike off the defence.

(2) Before passing an order for striking off the defence, the court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.

(3) The amount deposited under this rule shall be paid to the plaintiff owner/lessor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it would not also be treated as a waiver of notice of termination."

70. The purpose and object of the above provision is explained by the Division Bench of this Court in **Raghubir Rai** (Supra), by observing as follows: -

"22. Though Order XVA is titled as "Striking Off defence in a suit by a lessor" but the same is not confined to striking off of defence only. The same, independently of Order XXXIX Rule 10 CPC, vests in the Court the power for issuing a direction for deposit. While so empowering the Court, as rightly held by the learned Single Judge, a departure was made from the language of Order XXXIX Rule 10 CPC. While under Order XXXIX Rule 10 CPC, a direction could be issued only for deposit/payment of admitted amount, the word 'admitted' is conspicuous by its absence in Order XV-A of the CPC. A discretion has been vested in the Court to issue direction for deposit of "such amount" as the Court may direct. Such departure from language of an earlier existing provision is a tool of interpretation. There is abundant authority to the effect that when the situation has been differently expressed, the legislature must be taken to have intended to express a different



intention. The Supreme Court in The Western India Theatres Ltd. v. Municipal Corporation of the City of Poona AIR 1959 SC 586 held that the legislature having substituted the word “reduced”, earlier existing, with the word “modify”, this change must have been made with some purpose and the purpose could only be to use an expression of wider connotation so as to include not only reduction but also other kinds of alteration; accordingly, the contention to interpret “modify” as “reduce”, because in the marginal note the word “reduce” remained, was rejected. Reference may also be made to Khatri Hotels Pvt. Ltd. v. Union of India (2011) 9 SCC 126, where, finding the legislature to have designedly made a departure from the language of Article 120 of the Limitation Act, 1908, in enacting Article 58 of the 1963 Act, by introduction of the word “first” between the words “sue” and “accrued”, it was held that if the suit is based on multiple causes of action, the period of limitation will begin to run from the date when the cause of action first accrued.

23. We are therefore unable to agree with the contention of the counsel for the appellant/defendant that the Court, in exercise of powers under Order XV-A of the CPC, is incapacitated from directing deposit at a rate higher than that admitted by the defendant.

24. We are of the view that the Court, in exercise of powers under Order XV-A of the CPC is empowered to direct deposit at such rate as the erstwhile tenant/defendant may on the basis of material on record be found to have agreed to pay to the landlord for the said period even if the tenant before the Court may not have admitted the same or disputed/controverted the same. Similarly, in a suit between the owner of immovable property and an unauthorized occupant, Order XV-A empowers the Court to direct the defendant



who though may not be liable to be ejected/dispossessed immediately without trial but who, on preponderance of probabilities may not be found to have a right to continue in possession of the property, to deposit during the pendency of the suit such amount as may appear to be reasonable, to safeguard the right of the owner of the property and to ensure that such owner is compensated at least for the time taken in adjudication of a false defence taken up by the defendant in unauthorized occupation. This, in our view is necessary to avoid the process of the Court being abused by unscrupulous litigants and to curb the growing tendency of using the process of litigation as a tool of oppression.

25. We should however not be interpreted as laying down that Order XVA empowers the Court to, without evidence assess mesne profits or to merely by taking judicial notice and without any material on record, arbitrarily direct the defendant to deposit a much higher amount than what he had been paying or had agreed to pay. Reference in this regard can be made to the judgment of the Division Bench of this Court in National Radio & Electronic Co. Ltd. v. Motion Pictures Association 122 (2005) DLT 629 laying down that mesne profit have to be proved by reliable and cogent evidence in accordance with law. Of course, if the erstwhile tenant/defendant is found to have agreed to periodically increase the rent/user charges, even if such contract may have come to an end, in exercise of powers under Order XV-A of the CPC direction for deposit with such increases can be made unless strong grounds exist for such increases being not due.”

71. From the above, it would be evident that under Order XV-A of the CPC, the Court is not precluded from directing the defendant to



deposit an amount higher than what is admitted by the defendant as being payable for the possession of the Suit Property. The Court, however, cautioned that Order XV-A of the CPC does not empower the Court to fix such an amount arbitrarily, without any evidence, and merely by taking judicial notice, and without any material on record. The same is the view of this Court in ***Roshan Lal Vegetable Products (P) Ltd.*** (Supra); ***Consep India (P) Ltd.*** (Supra); ***Usha Gupta*** (Supra); and ***Paramjeet Singh Kalsi*** (Supra).

72. In ***Colaba Central Co-operative Consumer Wholesale and Retail Stores Ltd.*** (Supra), the High Court of Bombay has held that sub-Rule (1) of Order XV-A of the CPC applies to a Suit by a lessor against a lessee or by a licensor against a licensee for eviction with or without the arrears of rent or license fee and future mesne profits. Its intent was to obviate the hardship suffered by the landlord/licensor to await the final decision in the Suit for eviction.

73. The learned senior counsel for the petitioners, however, sought to distinguish the said judgment by contending that the said judgment was based on an Explanation added to Order XV-A of the CPC as applicable to Bombay, and similar Explanation has not been added to Order XV-A of the CPC as applicable in Delhi. In my view, the non-addition of the said Explanation can have no effect inasmuch as Order XV-A Rule (1) applies to a Suit by an owner/licensor for the eviction of an unauthorized occupant. As has been held hereinabove, the Suit, though couched for a decree of mandatory injunction is, in effect, a Suit for eviction of an ex-licensee. Therefore, the provision of Order XV-A of the CPC would apply to such a Suit.



2024:DHC:2966



74. Keeping the above principles in mind, I shall now revert to the facts of the present case. The Suit in question was filed on or around April 2006. Order XV-A of the CPC as applicable to Delhi was inserted with effect from 12.11.2008. The application under Order XV-A of the CPC was filed by the respondent no.1, only on 03.11.2020. In the meantime, the evidence of the plaintiff/respondent no.1 had been completed and the Suit was at the stage of recording of the evidence of the defendants. The submission of the learned senior counsel for the petitioners that in the entire evidence of the respondent no. 1, no proof with respect to the current market rent of the Suit Property had been filed by the respondent no.1 and, in fact, respondent no.1 reiterated its claim of mesne profits at the rate of Rs.12,000/- per month, remained uncontroverted by the learned senior counsel for the respondent no.1. However, the learned senior counsel for the respondent no.1 submits that the proof of the market rent was filed along with the subject application and has also been filed before this Court as additional documents in the form of various Lease Deeds of adjoining properties to the Suit Property.

75. The Impugned Order has directed the petitioners to deposit/make payment at the rate of Rs.2,00,000/- per month from the date of enactment of Order XV-A of the CPC, that is, 12.11.2008. The basis for such determination is a Lease Deed and the assertion of one of the petitioners/defendants therein running a business of AirBnB in the Suit Property, which admittedly, is not a part of the evidence that has already been recorded before the learned Trial Court on behalf of the respondent no.1/plaintiff. Whether the respondent no.1 can be



2024:DHC:2966



allowed to introduce fresh evidence after the conclusion and closure of its evidence in the Suit itself is doubtful.

76. I must herein also note that by an Order dated 24.05.2007, a specific issue on whether the plaintiff is entitled to claim damages and if so, at what rate and for what period, had been framed by the learned Trial Court. The respondent no.1, therefore, cannot claim that the learned Trial Court would postpone this issue to be determined at a later stage by directing an inquiry to be conducted separately in that regard. Once the issue has been framed, and the onus to prove that issue being laid on the plaintiff/respondent no.1, its evidence should have answered this issue, at least, till the date of filing of the evidence. The plaintiff cannot seek postponement of the determination of the said issue by placing reliance on Order XX Rule 12(1)(ba) or (c) of the CPC.

77. In any case, whether such a rate would apply right from the year 2008 is also not substantiated by any evidence that is placed by the respondent no.1 on record before the learned Trial Court. The Impugned Order has been passed on 23.01.2023. Therefore, a period of almost 15 years has been assessed at the same rate by the learned Trial Court. The subject application itself was filed only on 03.11.2020.

78. Though the learned senior counsel for the respondent no.1 has asserted that the period of limitation shall not apply to the application in hand, in the Impugned Order, there is not even a discussion, leave alone any justification provided for directing payment/deposit of the amount for a period prior to the period of 3 years to the filing of the



subject application. This issue has not been considered by the learned Trial Court. I may herein note the submission of the learned senior counsel for the petitioners, who, placing reliance on the judgment of the Supreme Court in the *Sridevi & Ors.* (Supra) and of this Court in *Lal Chand Public Charitable Trust* (Supra), has submitted that even where no period of limitation is prescribed for an application, Article 137 of the Limitation Act, 1963 shall apply thereto, which states that such an application must be filed within a period of 3 years from the date when the cause of action arose or the right to sue accrues. He has submitted that a direction, if any, to deposit/pay the rent should be confined to a period of only 3 years prior to the date of filing of the subject application. This submission ought to have been considered by the learned Trial Court at the first instance.

CONCLUSION:

79. Keeping in view the above principles and in the facts of the present case, it is held as under: -

- a) Though the Subject Suit is praying for a decree of mandatory injunction, it is in the nature of and in effect a Suit for possession;
- b) Provisions of Order XX Rule 12 of the CPC would apply to the Subject Suit;
- c) Provisions under Order XV-A of the CPC would also apply to the Subject Suit;
- d) The determination of the amount by the learned Trial Court to be paid/deposited by the petitioners, and the period for which



2024:DHC:2966



the same is to be paid/deposited is, however, without considering the relevant factors.

80. In view of the above, the Impugned Order dated 23.01.2023 is set aside. The subject application is remanded back to the learned Trial Court for the purposes of a fresh determination in accordance with the law and after considering the evidence that has been placed by the parties on record.

81. Accordingly, the petition is allowed in the above terms. There shall be no order as to costs. The pending application is also disposed of as being rendered infructuous.

NAVIN CHAWLA, J

APRIL 15, 2024/rv/AS

Click here to check corrigendum, if any